



State of New Jersey  
DEPARTMENT OF COMMUNITY AFFAIRS  
101 SOUTH BROAD STREET  
PO Box 819  
TRENTON, NJ 08625-0819

PHILIP D. MURPHY  
Governor

LT. GOVERNOR SHEILA Y. OLIVER  
Commissioner

INTERIM ORDER

January 25, 2022 Government Records Council Meeting

Edwin Sheppard  
Complainant

Complaint No. 2017-180

v.

NJ Department of Law and Public Safety,  
Division of Law  
Custodian of Record

At the January 25, 2022, public meeting, the Government Records Council ("Council") considered the January 18, 2022, Findings and Recommendations of the Executive Director and all related documentation submitted by the parties. The Council voted unanimously to adopt the entirety of said findings and recommendations. The Council, therefore, finds that:

1. The Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request based on a warranted and substantiated extension. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). See Libertarians for Transparent Gov't v. Summit Pub. Sch. (Union), GRC Complaint No. 2016-193 (March 2018). Therefore, no "deemed" denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
2. The GRC must conduct an *in camera* review of the 161 pages of e-mails to determine the validity of the Custodian's purported assertion that they were exempt in part under the attorney-client privilege or other asserted exemptions. N.J.S.A. 47:1A-1.1. See Paff v. N.J. Dep't of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).
3. **The Custodian shall deliver<sup>1</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 2 above), nine (9) copies of the redacted records, a document or redaction index<sup>2</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>3</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**

<sup>1</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>2</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>3</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Interim Order Rendered by the  
Government Records Council  
On The 25<sup>th</sup> Day of January 2022

Robin Berg Tabakin, Esq., Chair  
Government Records Council

I attest the foregoing is a true and accurate record of the Government Records Council.

Steven Ritardi, Esq., Secretary  
Government Records Council

**Decision Distribution Date: January 26, 2022**

**STATE OF NEW JERSEY  
GOVERNMENT RECORDS COUNCIL**

**Findings and Recommendations of the Executive Director  
January 25, 2022 Council Meeting**

**Edwin Sheppard<sup>1</sup>  
Complainant**

**GRC Complaint No. 2017-180**

**v.**

**N.J. Department of Law and Public Safety,  
Division of Law<sup>2</sup>  
Custodial Agency**

**Records Relevant to Complaint:** Electronic copies via e-mail of all communications between Deputy Attorney General (“DAG”) Labinot Berlajolli and James Arsenault between April 1, 2016 and December 31, 2016.

**Custodian of Record:** Octavia Frias

**Request Received by Custodian:** July 6, 2017

**Response Made by Custodian:** July 21, 2017

**GRC Complaint Received:** September 11, 2017

**Background<sup>3</sup>**

**Request and Response:**

On July 6, 2017, the Complainant submitted an Open Public Records Act (“OPRA”) request to the Custodian seeking the above-mentioned records. On July 17, 2017, the seventh (7<sup>th</sup>) business day after receipt of the OPRA request, the Custodian requested an extension of time through July 24, 2017 to respond to the Complainant’s OPRA request. The Complainant responded asking for an explanation on the extension. On July 18, 2017, the Custodian responded stating that responsive records were being reviewed and that a response should occur sooner than the deadline date. On the same day, the Complainant denied the extension request because the Custodian “twice failed to provide an acceptable reason for an extension.” The Custodian responded stating that she would disclose records by the end of the business day on July 19, 2017.

Late on July 19, 2017, and subsequently on July 21, 2017, the Complainant e-mailed the Custodian noting that she failed to disclose records and demanding a response. The Complainant

---

<sup>1</sup> No legal representation listed on record.

<sup>2</sup> Represented by Deputy Attorney General (“DAG”) James A. McGhee. Previously represented by DAG Angela Juneau Bezer.

<sup>3</sup> The parties may have submitted additional correspondence or made additional statements/assertions in the submissions identified herein. However, the Council includes in the Findings and Recommendations of the Executive Director the submissions necessary and relevant for the adjudication of this complaint.

Edwin Sheppard v. N.J. Department of Law and Public Safety, Division of Law, 2017-180 – Findings and Recommendations of the Executive Director

further noted that he “expect[ed]” that the Custodian would fulfill his OPRA request by 12:00 p.m. on July 22, 2017. On July 21, 2017, the Custodian responded in writing disclosing six (6) pages of e-mails and attachments with redactions and denying access to 161 additional pages of records under the attorney-client privilege, common interest privilege, and attorney work-product exemptions. O’Boyle v. Borough of Longport, 218 N.J. 168 (2014). Later that day, the Complainant e-mailed the Custodian disputing the response because it failed to include a Vaughn Index. The Complainant also disputed the cited exemptions, arguing that DAG Berlajolli was not representing the County.

On July 24, 2017, and again on July 25, 2017, the Complainant e-mailed the Custodian demanding a Vaughn Index. On July 25, 2017, the Custodian e-mailed the Complainant stating that she would provide an amended response by close of business on July 26, 2017. On July 26, 2017, the Custodian responded disclosing the remaining 161 pages of records with redactions under the previously identified exemptions, as well as the “inter-agency or intra-agency advisory, consultative, or deliberative (“ACD”) material” exemption.

#### Denial of Access Complaint:

On September 11, 2017, the Complainant filed a Denial of Access Complaint with the Government Records Council (“GRC”). The Complainant noted that the subject OPRA request was the result of a “Provisional Order of Revocation and Discipline” (“PORD”) delivered to HomeCare Specialists (“HCS”), his employer, who contracted with the County of Cape May (“County”) on April 6, 2016. The Complainant contended that notwithstanding the process set forth to challenge that PORD, the County moved to terminate HCS’s contract at a County meeting on April 26, 2016. The Complainant contended that this move coincided with the alleged dissemination of “false and extralegal” notifications and instructions to multiple government agencies. The Complainant alleged that the forgoing included multiple e-mail communications between DAG Berlajolli and Mr. Arsenault. The Complainant contended that it was these communications that he believes led to the termination being placed on the meeting agenda and that both parties intended to keep those communications confidential.

The Complainant first contended that the Custodian failed to timely respond to the subject OPRA request by not providing an acceptable reason for extending the original response time frame.

The Complainant next disputed redactions applied to records disclosed by the Custodian, with the exception of minor redactions for personal information contained in “the RFP portion of the response.” The Complainant stated that on July 21, 2017 the Custodian originally disclosed only six (6) pages of records with redaction of six (6) e-mail bodies and withheld 161 additional pages of records under the common interest and attorney-client privilege exemptions. The Complainant noted that on July 26, 2017, the Custodian disclosed the previously denied 161 pages of e-mails with redactions; however, five (5) of the six (6) e-mail bodies from the July 21, 2017 disclosure included therein were left unredacted. The Complainant argued that a review of these e-mails proves that the Custodian erroneously redacted the remaining passages in an effort to “cover up [DAG Berlajolli’s] actions” with willfully false statements.

The Complainant also contended that the attorney-client privilege did not apply here because no such relationship exists between DAG Berajolli and Mr. Arsenault. The Complainant further argued that the Division of Law (“DOL”) could not claim a common interest exemption as discussed in O’Boyle, 218 N.J. 168. The Complainant argued that the failed application of the exemption only exemplifies both parties’ attempts to knowingly withhold disclosable records. The Complainant also noted that Mr. Arsenault waived the attorney-client privilege when he copied DAG Berajolli on e-mails between himself and other County employees. Alpha Painting & Const., Inc. v. Delaware River Port Auth. of Pa., 208 F.Supp. 3d 607 (D.N.J. 2016) (citing Westinghouse Elec. Corp. v. Republic of the Philippines, 951 F.2d 1414, 1424 (3d Cir. 1991)).

The Complainant further disputed that the ACD exemption applied to redactions within the disclosed e-mails. The Complainant asserted that the Custodian failed to provide any proof that this exemption applied, despite ample opportunity to do so.

The Complainant noted in closing that he would withdraw this complaint if the Custodian disclosed the responsive e-mails without redactions; however, he demanded that several certifications addressing various issues be submitted should this not occur. The Complainant also requested that: 1) the GRC require the Custodian to disclose to him all 161 pages of e-mails without redactions; 2) the GRC find that the Custodian be found to have knowingly and willfully violated OPRA; 3) the GRC award “renumeration to [the Complainant] for the time” expended on this complaint;<sup>4</sup> and 4) DOL provide him a “written apology . . . for the conduct of its employees” handling the subject OPRA request and “condemn[ing] the same conduct.”

#### Statement of Information:<sup>5</sup>

On June 6, 2018, the Custodian filed a Statement of Information (“SOI”). The Custodian certified that she received the Complainant’s OPRA request on July 6, 2017. The Custodian certified that her search involved DOL’s Information Technology (“IT”) staff searching for responsive records in DAG Berajolli’s e-mail account. The Custodian averred that the resulting e-mails were provided to her for review and redaction. The Custodian certified that following an extension of time, she responded in writing on July 21, 2017 disclosing six (6) pages of e-mails with redactions and denying access to 161 pages of e-mails. The Custodian certified that she responded again on July 26, 2017 providing a revised response wherein she disclosed the previously withheld 161 pages of e-mails with redactions.

The Custodian stated that HCS was audited by the New Jersey Division of Consumer Affairs (“DCA”) in September 2015 that resulted in multiple violation findings and a civil penalty of \$2,000.00. See DCA (2016).<sup>6</sup> The Custodian stated that HCS contested the audit findings and

---

<sup>4</sup> The GRC notes that OPRA only supports prevailing party attorney’s fees where a complainant who is represented prevails in OPRA litigation. N.J.S.A. 47:1A-6. OPRA does not provide for general renumeration to a *pro se* party, even if they are a licensed attorney. See Feld v. City of Orange Twp., 2019 N.J. Super. Unpub. LEXIS 903 (App. Div. 2019); Pitts v. N.J. Dep’t of Corr., GRC Complaint No. 2005-71 (April 2006).

<sup>5</sup> On October 6, 2017, this complaint was referred to mediation. On November 20, 2017, this complaint was referred back to the GRC for adjudication.

<sup>6</sup> “New Jersey Division of Consumer Affairs Seeks to Revoke Registration of Cape May County Health Care Service Firm That Allegedly Placed Uncertified Employees with Clients and Falsified Documents” <https://www.nj.gov/oag/newsreleases16/pr20160411a.html> (accessed December 30, 2021).

Edwin Sheppard v. N.J. Department of Law and Public Safety, Division of Law, 2017-180 – Findings and Recommendations of the Executive Director

requested a hearing. The Custodian noted that DAG BerlaJolli, who represented DCA in a hearing against HCS, subpoenaed Mr. Arsenault to testify on behalf of the County due to its contract therewith. The Custodian noted that the matter ultimately settled by consent order on October 28, 2016. The Custodian stated that the Complainant subsequently submitted the subject OPRA request and this complaint contesting redactions made to the responsive e-mails.

The Custodian contended that she lawfully denied access to the redacted portions of the e-mails under the ACD, common interest, attorney-client, and attorney work product exemptions. N.J.S.A. 47:1A-1.1; O'Boyle, 218 N.J. 168. The Custodian contended that the facts here are “virtually identical” to the facts in O'Boyle and that the common interest privilege should apply accordingly. The Custodian noted that Mr. Arsenault contacted DAG BerlaJolli after the issuance of DCA’s press release due to the potential impact on the County’s contract with HCS. The Custodian argued that aside from the inherent common interest the County and DCA had regarding the HCS issue, same also existed in the extent enforcement action wherein Mr. Arsenault was called as a witness. The Custodian thus argued that the redacted portions of the responsive e-mails plainly fell within the cited exemptions.

The Custodian further argued that the New Jersey Department of Law & Public Safety’s (“LPS”) regulations also exempted the redacted e-mail passages. N.J.S.A. 47:1A-9. The Custodian asserted that N.J.A.C. 13:1E-3.2(a)(1) exempts access to “[r]ecords concerning background investigations or evaluations for . . . licensing, whether open, closed, or inactive.” Id. The Custodian asserted that because DCA and DOL are divisions within LPS, N.J.A.C. 13:1E-3.2(a)(1) applies to the responsive records as they pertained to an investigation into HCS.

#### Additional Submissions:

On June 6, 2018, the Complainant responded to the SOI taking issue with “very slanderous” remarks against HomeCare Specialists. The Complainant also noted that Mr Arsenault was not subpoenaed until months after the responsive e-mails occurred.

### Analysis

#### Timeliness

OPRA provides that a custodian may request an extension of time to respond to the complainant’s OPRA request, but the custodian must provide a specific date by which he/she will respond. Should the custodian fail to respond by that specific date, “access shall be deemed denied.” N.J.S.A. 47:1A-5(i).

In Rivera v. City of Plainfield Police Dep’t (Union), GRC Complaint No. 2009-317 (May 2011), the custodian responded in writing to the complainant’s request on the fourth (4<sup>th</sup>) business day by seeking an extension of time to respond and providing an anticipated date by which the requested records would be made available. The complainant did not consent to the custodian’s request for an extension of time. The Council stated that:

The Council has further described the requirements for a proper request for an extension of time. Specifically, in Starkey v. N.J. Dep't of Transportation, GRC Complaint Nos. 2007-315, 2007-316 and 2007-317 (February 2009), the Custodian provided the Complainant with a written response to his OPRA request on the second (2<sup>nd</sup>) business day following receipt of said request in which the Custodian requested an extension of time to respond to said request and provided the Complainant with an anticipated deadline date upon which the Custodian would respond to the request. The Council held that “because the Custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated deadline date of when the requested records would be made available, the Custodian properly requested said extension pursuant to N.J.S.A. 47:1A-5(g) [and] N.J.S.A. 47:1A-5(i).

Further, in Criscione v. Town of Guttenberg (Hudson), GRC Complaint No. 2010-68 (November 2010), the Council held that the custodian did not unlawfully deny access to the requested records, stating in pertinent part that:

[B]ecause the Custodian provided a written response requesting an extension on the sixth (6<sup>th</sup>) business day following receipt of the Complainant's OPRA request and providing a date certain on which to expect production of the records requested, and, notwithstanding the fact that the Complainant did not agree to the extension of time requested by the Custodian, the Custodian's request for an extension of time [to a specific date] to respond to the Complainant's OPRA request was made in writing within the statutorily mandated seven (7) business day response time.

Moreover, in Werner v. N.J. Civil Serv. Comm'n, GRC Complaint No. 2011-151 (December 2012), the Council again addressed whether the custodian lawfully sought an extension of time to respond to the complainant's OPRA request. The Council concluded that because the custodian requested an extension of time in writing within the statutorily mandated seven (7) business days and provided an anticipated date by which the requested records would be made available, the custodian properly requested the extension pursuant to OPRA. See also Rivera, GRC 2009-317; Criscione, GRC 2010-68; and Starkey, GRC 2007-315, *et seq.*

Although extensions are rooted in well-settled case law, the Council need not find valid every request for an extension containing a clear deadline. In Ciccarone v. N.J. Dep't of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014), the Council found that the custodian could not lawfully exploit the process by repeatedly rolling over an extension once obtained. In reaching the conclusion that the continuous extensions resulted in a “deemed” denial of access, the Council looked to what is “reasonably necessary.”

In the instant matter, the Custodian sought an extension of time until July 24, 2017 for the Complainant's OPRA request. However, after responding on that day, the Complainant's protest<sup>7</sup> to the response prompted the Custodian to again extend the time frame through July 26, 2017. The

---

<sup>7</sup> The Complainant also contended that the Custodian failed to provide a Vaughn Index upon her response. The GRC notes that per Halliwell and Pennant v. Borough of Brooklawn (Camden), GRC Complaint No. 2016-201 (August 2018), custodians are not required to provide a specific Vaughn Index as part of their response to an OPRA request. Edwin Sheppard v. N.J. Department of Law and Public Safety, Division of Law, 2017-180 – Findings and Recommendations of the Executive Director

Custodian thus extended the response time on two (2) occasions for a total of seven (7) business days. As noted above, a requestor's approval is not required for a valid extension. However, it should be noted that the Complainant objected to the extension prior to the filing of this complaint.

To determine if the extended time for a response is reasonable, the GRC must first consider the complexity of the request as measured by the number of items requested, the ease in identifying and retrieving requested records, and the nature and extent of any necessary redactions. Ciccarone, GRC 2013-280. The GRC must next consider the amount of time the custodian already had to respond to the request. Id. Finally, the GRC must consider any extenuating circumstances that could hinder the custodian's ability to respond effectively to the request.<sup>8</sup> Id.

Regarding the subject OPRA request, the Complainant sought all communications between DAG Labinot Berlajolli and James Arsenault between April 1, 2016 and December 31, 2016. In the SOI, the Custodian explained that IT performed a search and identified 161 pages of responsive records that she was required to review and redact them. The Custodian ultimately responded on July 21, 2017, the fourth (4<sup>th</sup>) business day of the extension, disclosing six (6) e-mails and denying the rest. However, upon urging from the Complainant, the Custodian disclosed all 161 pages of responsive records to the Complainant with redactions on July 26, 2017.

From the Custodian's receipt of the Complainant's OPRA request, she sought an additional five (5) business days to respond. Following the Complainant's dispute over the Custodian's July 21, 2017 response, she extended the time frame two (2) additional business days. Thus, the Custodian sought seven (7) total business days in addition to the original seven (7) business days. In determining whether the extension was ultimately unreasonable, the GRC looks to its prior decision in Libertarians for Transparent Gov't v. Summit Pub. Sch. (Union), GRC Complaint No. 2016-193 (March 2018). There, the custodian sought one (1) extension comprising of twelve (12) business days to respond to the subject OPRA request. The Council ultimately found that the extension was warranted and substantiated. In reaching this conclusion, the Council noted that although the request itself was not complex, the underlying circumstances pertaining to the review of the responsive settlement agreement substantiated the extension.

The GRC sees the facts here as more permissive of an extension than in Libertarians, GRC 2016-193. Specifically, the Custodian sought significantly less time than the custodian in Libertarians. Further, the OPRA request here was specific to the records sought, as was the case in Libertarians. Further, the Custodian was required to review and redact, where applicable, the responsive 161 pages of records, which could have taken to considerable time to conduct a careful review. Thus, based on the evidence of record, the GRC finds that extending the response time for the subject OPRA request to the extent demonstrated in the instant matter was not excessive.

Accordingly, the Custodian has borne her burden of proof that she timely responded to the Complainant's OPRA request based on a warranted and substantiated extension. N.J.S.A. 47:1A-

---

<sup>8</sup> "Extenuating circumstances" could include, but not necessarily be limited to, retrieval of records that are in storage or archived (especially if located at a remote storage facility), conversion of records to another medium to accommodate the requestor, emergency closure of the custodial agency, or the custodial agency's need to reallocate resources to a higher priority due to *force majeure*.

Edwin Sheppard v. N.J. Department of Law and Public Safety, Division of Law, 2017-180 – Findings and Recommendations of the Executive Director



6; Ciccarone, GRC 2013-280. See Libertarians, GRC 2016-193. Therefore, no “deemed” denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).

### **Unlawful Denial of Access**

OPRA provides that government records made, maintained, kept on file, or received by a public agency in the course of its official business are subject to public access unless otherwise exempt. N.J.S.A. 47:1A-1.1. A custodian must release all records responsive to an OPRA request “with certain exceptions.” N.J.S.A. 47:1A-1. Additionally, OPRA places the burden on a custodian to prove that a denial of access to records is lawful pursuant to N.J.S.A. 47:1A-6.

In Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005), the complainant appealed a final decision of the Council<sup>9</sup> that accepted the custodian’s legal conclusion for the denial of access without further review. The Appellate Division noted that “OPRA contemplates the GRC’s meaningful review of the basis for an agency’s decision to withhold government records . . . . When the GRC decides to proceed with an investigation and hearing, the custodian may present evidence and argument, but the GRC is not required to accept as adequate whatever the agency offers.” Id. The court stated that:

[OPRA] also contemplates the GRC’s *in camera* review of the records that an agency asserts are protected when such review is necessary to a determination of the validity of a claimed exemption. Although OPRA subjects the GRC to the provisions of the ‘Open Public Meetings Act,’ N.J.S.A. 10:4-6 to -21, it also provides that the GRC ‘may go into closed session during that portion of any proceeding during which the contents of a contested record would be disclosed.’ N.J.S.A. 47:1A-7(f). This provision would be unnecessary if the Legislature did not intend to permit *in camera* review.

[Id. at 355.]

Further, the court found that:

We hold only that the GRC has and should exercise its discretion to conduct *in camera* review when necessary to resolution of the appeal . . . . There is no reason for concern about unauthorized disclosure of exempt documents or privileged information as a result of *in camera* review by the GRC. The GRC’s obligation to maintain confidentiality and avoid disclosure of exempt material is implicit in N.J.S.A. 47:1A-7(f), which provides for closed meeting when necessary to avoid disclosure before resolution of a contested claim of exemption.

[Id.]

Here, the Custodian disclosed to the Complainant 161 pages of e-mails with redactions under attorney-client privilege, common interest privilege, attorney work-product privilege, and

---

<sup>9</sup> Paff v. N.J. Dep’t of Labor, Bd. of Review, GRC Complaint No. 2003-128 (October 2005).  
Edwin Sheppard v. N.J. Department of Law and Public Safety, Division of Law, 2017-180 – Findings and Recommendations of the Executive Director

ACD exemptions. O’Boyle, 218 N.J. 168. The Complainant argued in the Denial of Access Complaint that the redactions were unlawful because DAG BerlaJolli did not represent County and had no common interest allowing for redaction of the e-mails. The Complainant also noted that the Custodian included in her July 26, 2017 disclosure five (5) e-mail bodies which she previously redacted in her initial July 24, 2017 response. The Custodian maintained her position in the SOI, arguing that DCA and the County had a common interest in the actions being taken against HomeCare Specialists.

Upon review of the evidence of record here, the GRC cannot determine whether the exemptions applied to the redacted portions of the responsive e-mails. The GRC is also compelled to conduct an *in camera* review based on the Custodian’s July 26, 2017 disclosure of five (5) e-mail bodies previously redacted as part of her July 21, 2017 disclosure days earlier. Thus, it is evident that a “meaningful review” is necessary to determine whether all withheld and redacted e-mails reasonably fall within the attorney-client privilege or other cited exemptions as purportedly asserted by the Custodian. Thus, the GRC must review all 161 pages of e-mails to determine the full applicability of these exemptions. Such an action is common, as the GRC will routinely perform an *in camera* review in similar circumstances. See e.g. Pouliot v. N.J. Dep’t of Educ., GRC Complaint No. 2015-281 (Interim Order dated January 31, 2017).

Therefore, the GRC must conduct an *in camera* review of the 161 pages of e-mails to determine the validity of the Custodian’s purported assertion that they were exempt in part under the attorney-client privilege or other asserted exemptions. N.J.S.A. 47:1A-1.1. See Paff, 379 N.J. Super. at 346.

### **Knowing & Willful**

The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian’s compliance with the Council’s Interim Order.

### **Conclusions and Recommendations**

The Executive Director respectfully recommends the Council find that:

1. The Custodian has borne her burden of proof that she timely responded to the Complainant’s OPRA request based on a warranted and substantiated extension. N.J.S.A. 47:1A-6; Ciccarone v. N.J. Dep’t of Treasury, GRC Complaint No. 2013-280 (Interim Order dated July 29, 2014). See Libertarians for Transparent Gov’t v. Summit Pub. Sch. (Union), GRC Complaint No. 2016-193 (March 2018). Therefore, no “deemed” denial occurred in the instant matter. N.J.S.A. 47:1A-5(g); N.J.S.A. 47:1A-5(i).
2. The GRC must conduct an *in camera* review of the 161 pages of e-mails to determine the validity of the Custodian’s purported assertion that they were exempt in part under the attorney-client privilege or other asserted exemptions. N.J.S.A. 47:1A-1.1. See Paff v. N.J. Dep’t of Labor, Bd. of Review, 379 N.J. Super. 346 (App. Div. 2005).

3. **The Custodian shall deliver<sup>10</sup> to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see conclusion No. 2 above), nine (9) copies of the redacted records, a document or redaction index<sup>11</sup>, as well as a legal certification from the Custodian, in accordance with N.J. Court Rules, R. 1:4-4,<sup>12</sup> that the records provided are the records requested by the Council for the *in camera* inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.**
4. The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

Prepared By: Frank F. Caruso  
Executive Director

January 18, 2022

---

<sup>10</sup> The *in camera* records may be sent overnight mail, regular mail, or be hand-delivered, at the discretion of the Custodian, as long as the GRC physically receives them by the deadline.

<sup>11</sup> The document or redaction index should identify the record and/or each redaction asserted and the lawful basis for the denial.

<sup>12</sup> "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Edwin Sheppard v. N.J. Department of Law and Public Safety, Division of Law, 2017-180 – Findings and Recommendations of the Executive Director